Administrative Problems Growing Out of the Immigration Laws

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WHILE officially aiding in the administration of immigration laws, I shall not hold myself at liberty to discuss immigration subjects as freely as I hope to do when my official responsibilities shall have come to an end. I see no reasonable objection, however, to indicating at this time some of the every-day problems of immigration work in its administrative finalities.

To the extent that those problems are exasperating or otherwise difficult, it is chiefly because they involve humane considerations which must be dealt with by administrative processes as foreign to the human side of life as the administration of public works, and with even a narrower margin for administrative discretion. To minimize the unavoidable hardships, the present Secretary of Labor, Mr. Wilson, has gone as far as the laws permit. His policy is indicated by an admonition to immigration officials which he published in his first annual report, 1913, and has since frequently emphasized. Referring in particular to immigrant stations, but in a spirit of manifest allusion to the whole immigration work, he said:

> While regulation and exclusion, and therefore detention, are necessary in respect of immigration, it should be understood by all who participate in administering these laws that they are not intended to be penalizing. It is with no unfriendliness to aliens that immigrants are detained and some of them excluded, but solely for the protection of our own people and our own institutions. Indifference, then, to the physical or mental comfort of these wards of ours from other lands should not be tolerated. Accordingly, every reasonable effort is made by the Department, within the limits of the appropriations, to minimize all the necessary hardships of their detention and to abolish all that are not necessary.

That policy may have fallen far short of complete realization. In so vast a public service bureaucracy, with all of its mechanical insensitiveness to the human element, is inevitable. Moreover, every administrative detail, whether of humanity or of efficiency, is held in check by Congressional appropriations; and these are narrowly limited from considerations of economy —unwarrantably limited it would seem, in view of the obtrusive fact that the income from arriving aliens in head-money alone, since the beginning of the immigration service in the early nineties has exceeded the total running expenses of the service by considerably more than two million dollars. Furthermore, the administrative discretion of the Secretary of Labor in immigration cases is, as noted above, extremely narrow. In consequence of it all, individual hardships are often more severe in immigration cases under the administration of the Secretary of Labor than in criminal cases under the jurisdiction of the courts.

A young man, for instance, arrives from a neighboring country of the south; he has lived in the United States for three years, coming from Canada; he had gone to the southern country to be with his mother during her serious illness, having for that purpose temporarily left his American-born wife and their American-born child in their little home in the American city where he is regularly employed. Appearing to

have every qualification for residence in this country he is, in immigration idiom, "a desirable"—at any rate, not "an undesirable." So the inspectors pass him on into this country. But just as he is leaving their presence, hastening to his wife and child, one of the inspectors, with no other purpose perhaps than to "pass the time o' day," asks him where he was born. Then the tragedy! His reply absolutely bars his return to his home and family in this country. He is a native of British India and to British India he must be deported. There is no administrative discretion; the utmost that can be done, and only the Secretary of Labor can do it, is to permit him to visit his wife and child temporarily before being exiled to a far country in which he has not been since he was a baby.

For another instance, an alien who has resided in the United States a score of years, a thrifty workingman with an American-born wife, a man who has built a home and reared two boys of American birth, goes to the "old country" on a visit, leaving his family behind to care for the American home. During his absence the illiteracy test is inserted in the immigration law over the President's veto. Our Americanized alien knows nothing of this until his return. In every other respect he is admissible, but he can not read forty words in some language or dialect. Very delinquent he is, to be sure, to have lived all those years among Americans without acquiring the American virtue of forty-word literacy in some language or dialect; but to exclude him is to impose an intolerable hardship upon his American-born family as well as himself. Yet the Secretary of Labor has no greater discretion than to admit him temporarily on a visit to his American home, his American-born wife and his American-citizen sons, after which—exile.

A slightly different problem occurs when an immigrant family is admitted, all but one member, a girl it may be of sixteen or eighteen, who is certified by the official physicians to be a mental defective and must therefore be excluded. The family may protest that she is normal but naturally shy and is dazed by novel surroundings; private experts may testify to her normality; she may have been temporarily admitted from absolute necessity—as in war-time, and while awaiting deportation at the war's end may have demonstrated her normality even to the extent of making and saving money; yet, there is no discretion. She must be deported. Having been officially certified as "feeble-minded," or for "constitutional psychopathic inferiority," her exclusion is mandatory. Lest she get into the poor-house or an asylum at public expense, or become the ancestor of a line of American defectives, no security for the one nor proof as to the other can be taken by the Secretary of Labor as a condition of permanently admitting her to her family. She must be mercilessly separated from them and deported.

A somewhat similar problem is presented when a resident alien sends for his family to make him the American home he has hoped for and worked for, and upon his family's arrival one of the little children is officially certified as mentally defective. Not only must the defective child be returned, but the mother must go back with it as its natural guardian, and to a country in which she no longer has a home. There would be no difference if the father were a naturalized citizen, except that in this case the mother, being a citizen in virtue of her husband's citizenship, would not be compelled to go back except by the compulsion of a

mother's love. If reasonable discretion in dealing with such cases were lodged in the chief administrator, adjustments could often be made that would serve all the legitimate purposes of the immigration law without inflicting the unnecessarily severe hardships or promoting the immoralities that spring out of hopelessly interminable family separation.

A variety of these hardship cases arises in connection with the various grounds for exclusion, regarding which the administrative authority has no discretion but must follow the letter of the law. Could Congressmen be confronted with such rigid cases while voting for the law, it is inconceivable that they would legislate in cold blood to compel what the generalized form of the law as they enact it does compel the Secretary of Labor to do. Granted that in the interest of the country mental defectives and illiterates and Hindus and all the rest must as a general proposition be excluded, nevertheless, provision should be made to avoid or modify hardships to individuals. The remedy is simple. It has been proposed by Secretary Wilson but Congress has rejected it. To understand it one need but recall the old definition of chancery powers, which, as I recollect, is to the effect that chancery affords that special relief in individual cases which the law "by reason of its universality" can not anticipate. What is needed in connection with immigration procedure is a chancery power whereby the Secretary of Labor may be appropriately humane in individual cases of hardship which the immigration laws, by reason of their necessary universality of application, can not provide for. If the chief administrator of the alien exclusion laws were authorized to relieve individual hardships in his discretion, to the extent even of absolute admission if necessary, being required to state his reasons on the record and to report to Congress cases of extreme exercise of his discretion, the integrity of the exclusion laws could be conserved without the unnecessary individual suffering which generates the most difficult problems of immigrant administration—problems that are heavily charged with embarrassment to any administrative official who regards American ideals as an essential part of Americanism.

Besides the numerous problems with reference to exclusion from this country, of which I have suggestively indicated two or three classes, there are serious problems with reference to expulsion. These are often less embarrassing than the others, because the Secretary of Labor is invested with authority to decide all contested questions of fact. He can not expel a resident alien without himself first deciding upon evidence that the facts demand it. The trial is not a jury trial, nor a trial under all the safeguards of judicial process; but a considerate Secretary of Labor has the legal power to decide issues of fact as a considerate jury would. Beyond that, however, he has no discretionary powers as to the expulsion of resident aliens any more than he has as to the exclusion of immigrants. If he finds that a resident alien does in fact fall into any of the classes whose expulsion from the country is required by the immigration statutes, he must deport that alien regardless of the inhumanity involved and without the slightest reference to its stultification of American ideals.

If, for instance, and I allude to actual cases, there have come to this country several alien families, some of the members of which are girls ranging from eight to ten or possibly to twelve years of age; and if these girls when in

their early "teens" go to work in American stores or factories; and if, seduced by a yearning for finery which they can not buy out of their scant wages but which less industrious or perhaps less unfortunate girls indulge in without blame, they are further seduced by American men; and if, treading farther in that ugly path along the byways of life in the United States, they plunge into a prostitutional career; and if, in some police raid upon an American house of ill-fame, they are caught in the net and, instead of being discharged with a ten-dollar fine like their American-born associates, they are given over to an immigrant officer who in due course applies to the Secretary of Labor for a warrant of deportation, —in such cases the Secretary of Labor has no alternative but to deport these alien girls to a country they have not seen since childhood, a country in which they have no friends to go to; and this, notwithstanding piteous appeals from their fathers and mothers for permission to take their once lost but now found daughters back into their homes. If, then, we were charged with rearing prostitutes for a foreign market, could we complain?

A comprehensive class of expulsion cases out of which embarrassing problems arise includes aliens who have resided in the United States less than five years and were mental defectives in any degree when they came, or beggars, or diseased, or laborers under contract to come, or whose passage money was paid by a society, municipality or foreign government. In such cases the Secretary of Labor is bound to deport those aliens whom he decides upon the evidence to be within any of the classes described. The law gives him no alternative, although the mental defectiveness has wholly passed away, the beggar aliens have become useful members of society, the importation contract be long since out of date, the contract-laborer has become an employer, or the passage money has been repaid long since out of income earned by useful work. No matter how the circumstances may have altered since the alien came, he must be deported if they existed at the time he came and he be caught in this country within five years after his arrival. This is also true of persons who were either prostitutes or "anarchists" when they came. Though the former have become virtuous mothers of American children, though the latter have become as thorough-going governmentalists as a Kaiser at the divine right extreme or a Jefferson or Lincoln at the democratic, nevertheless the Secretary of Labor must deport them for what they were when they came—if any friend of this country or enemy of the accused makes the accusation and proves it. For the Secretary to refuse would be at the least to challenge verbal assaults for maladministration.

Even in legitimate cases for expulsion, the questions of fact on which they hinge can not as a rule be determined fairly by administrative process. This almost mechanical proceeding is too arbitrary to be suited to American ideals of fair-play when humane considerations are involved. The kind of process which determines whether an old public building shall be torn down or a new one be built is not at all adapted to determining whether a human being is unfit to continue residing in an American community. When human rights or duties are involved, the process of determination should be judicial, not administrative. There is really no very good reason why an alien who has acquired resident rights in the United States should not have his day in the courts of his vicinity before any administrative official of the central government is

permitted, much less commanded, to deprive him of those rights. To expel an individual alien for an individual condition or individual conduct is a very different thing from excluding alien classes as a political necessity.

The Ultimate Basis of Immigration

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THE two elemental facts in both economics and sociology are that the ultimate source of all wealth is land and the sole means of making this wealth available for the satisfaction of human desires is human labor. The absorbing interest of mankind, accordingly, is and always has been how to make the former factor yield maximum returns with a minimum expenditure of the latter.

All the complicated laws and principles of economics are either elaborations or interpretations of these basic truths, variations upon the great central theme of life.

It follows that the ownership of land is the primary economic desideratum, not only because the ownership of land carries with it the possession of the immediate sources of wealth, but also because it commonly happens that if one owns enough land he can compel someone else to supply the labor necessary for the production of wealth.

The most illuminating conception of immigration is as the modern aspect of man's perennial search for land, for that is what it is in the last analysis. The power back of immigration is one of the most universal and insistent of all social forces—land hunger.

Man began his quest of land long before there was any economics or sociology to explain why he did it, long before he had progressed far enough in intelligence to be conscious of what he was doing himself. His early search for land was like that of the lower animals, instinctive, a natural reaction to the urge of hunger and the pressure of competitors. We may think of the primitive movements of population as the slow, gradual, unconscious expansion of the newly differentiated human species over the area suitable for its habitation, an area ever widening as the species developed in resourcefulness and evolved new types to fit diversified habitats.

Fortunately for man, during the first stages of his dispersion over the habitable globe he was not subjected to opposition from other groups of men. From the human point of view, he was moving into uninhabited territory; his only conflicts were with other species of animals and with inanimate Nature. This type of movement continued as long as there were uninhabited regions to be appropriated. This period included so large a majority of the whole span of human existence that the feeling of movement as a remedy for stringency apparently became closely interwoven with the very fibres of human nature until the appetite for land-appropriation—what one writer has naïvely transmuted into "the right to choose a home"—became almost instinctive.

A new epoch in population movements dawned when all the desirable sections of the surface of the earth became inhabited by men, so that the op-

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